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FIRST GENERAL COUNSEL'S REPORT

CELA
SENSITIVE

RAD REFERRAL: 11L-33

DATE ACTIVATED: February 9, 2012

EXPIRATION OF SOL:

October 13, 2015 (earliest)/

December 2, 2015 (latest)

SOURCE:

INTERNALLY GENERATED

RESPONDENTS:

Heath Shuler for Congress and Troy Burns,
in his official capacity as treasurer

RELEVANT STATUTE
AND REGULATION:

2 U.S.C. § 434(b)

11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

Reports Analysis Division Referral Materials

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Heath Shuler for Congress is the principal campaign committee for Heath Shuler, who was a candidate for North Carolina's 11th Congressional District in the 2010 general election.¹ The Reports Analysis Division ("RAD") referred Heath Shuler for Congress and Troy Burns, in his official capacity as treasurer ("the Committee"), to the Office of General Counsel ("OGC") for failing to disclose a total of \$1,003,696.58 in disbursements on its 2010 October Quarterly, 12-Day Pre-General, and 30-Day Post-General Reports. In response to the RAD Referral, the Committee stated that the reporting omissions were the result of an accounting error caused by its vendor's failure to check one of the Committee's bank accounts for disbursement information.

¹ Rep. Shuler is not seeking reelection in 2012. See Congressman Heath Shuler's Website, <http://shuler.house.gov/2012/02/rep-shuler-statement-on-retirement.shtml> (Feb. 2, 2012, 4:34 PM).

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Based on the available information, we recommend that the Commission open a Matter Under Review and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to disclose all disbursements in its disclosure reports. We also recommend that the Commission enter into pre-probable cause conciliation with the Committee

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

On January 31, 2011, the Committee amended three of its reports to the Commission to disclose additional disbursements totaling \$1,003,696.58. Specifically, the Committee amended its 2010 October Quarterly Report to disclose additional disbursements of \$228,085; its 2010 12-Day Pre-General Report to disclose additional disbursements of \$371,053; and its 2010 30-Day Post-General Report to disclose additional disbursements of \$404,558.58. These amendments reflected a notable increase in disbursement activity on each report, 35%, 94%, and 57%, respectively. Most of the increase resulted from the omission of three large disbursements to "Buying Time, LLC" for media buys (\$228,060 on September 27; \$371,028 on October 7; and \$400,493 on October 10, 2010). The remainder of the originally undisclosed disbursements was for stipend payments of approximately \$627 to three individuals, and a nominal amount of unitemized disbursements.

The Committee filed a Miscellaneous Text Submission (Form 99) with its amendments. The Form 99 explained that the disbursements were omitted from the Committee's original reports because of a vendor's accounting error, and stated that the "Committee is working with the vendor to correct its processes to prevent such errors in the future."

13044330237

1 RAD sent the Committee Requests for Additional Information ("RFAs") requesting
2 clarification regarding the increase in disbursements disclosed on each of the amended reports.
3 The Committee submitted virtually identical responses to each of these RFAs, again attributing
4 the omissions to a vendor's "accounting error" because the vendor "omitted the activity from one
5 of the Committee's bank accounts." The Committee further explained in the responses, as it did
6 on the January 31, 2011 Form 99, that the relevant amendments corrected the errors by disclosing
7 the omitted activity and that the Committee was working with the vendor to prevent similar
8 errors in the future.

9 On December 7, 2011, this Office notified the Respondent of the Referral in accordance
10 with the Commission's policy regarding notification in non-complaint generated matters.
11 See 74 Fed. Reg. 38617 (August 4, 2009). In the response to the notification, the Committee
12 reiterated its previous explanations and provided more detail about the circumstances of the
13 reporting errors. See Letter from Brian G. Svoboda, Perkins Coie to Jeff S. Jordan, Office of the
14 General Counsel (Feb. 2, 2012) (hereinafter "Response"). The Committee explained that its
15 compliance vendor, "Campaign Finance Officers LLC" ("CFO"), was tasked with reviewing the
16 Committee's bank accounts, inputting disbursement information from those accounts into filing
17 software, and preparing the Committee's FEC disclosure reports. *Id.* at 1. And CFO failed to
18 review the bank account that the Committee used for media purchases prior to filing the reports
19 in question and, as a result, it failed to disclose disbursements for five media transactions. *Id.* at
20 1-2.

21 The Committee states that it self-reported the omissions to the Commission through its
22 amendments on January 31, 2011, immediately upon learning of CFO's errors while preparing its
23 2010 Year-End Report. *Id.* Further, in order to prevent future errors, it has implemented a new

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1 policy requiring that both the Committee and CFO review the Committee's FEC reports twice
2 before filing. According to the Committee, CFO also fired the employee who committed the
3 errors. Finally, the Committee contends that "enforcement action . . . would be inappropriate
4 here," because it hired an outside vendor to assist with its reporting requirements, the omissions
5 involved only a small number of transactions and it took prompt corrective action. *Id.*

6 **B. Analysis**

7 The Federal Election Campaign Act of 1971, as amended ("the Act"), requires committee
8 treasurers to file reports of receipts and disbursements in accordance with the provisions of
9 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports must include,
10 *inter alia*, the total amount of receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R.
11 § 104.3. Committees are also required to disclose itemized breakdowns of disbursements and
12 disclose the name and address of each person who has received any disbursement in an aggregate
13 amount or value in excess of \$200 within the calendar year, together with the date and amount of
14 any such disbursement. *See* 2 U.S.C. § 434(b)(4),(5) and (6); 11 C.F.R. § 104.3(b)(2) and (4).

15 The Committee did not comply with the Act's reporting requirements when it failed to
16 disclose \$1,003,696.58 in disbursements, consisting primarily of payments for media purchases,
17 on its original reports filed with the Commission. The Committee failed to disclose \$228,085 in
18 disbursements on its original 2010 October Quarterly Report, \$371,053 in disbursements on its
19 original 2010 12-Day Pre-General Report, and \$404,558.58 in disbursements on its 2010 30-Day
20 Post-General Report. Therefore, we recommend that the Commission find reason to believe that
21 the Committee violated 2 U.S.C. § 434(b).

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RR 11L-33 (Heath Shuler for Congress)
First General Counsel's Report

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RR 11L-33 (Heath Shuler for Congress)
First General Counsel's Report

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IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Heath Shuler for Congress and Troy Burns, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Heath Shuler for Congress and Troy Burns, in his official capacity as treasurer, prior to a finding of probable cause to believe.
- 5.
6. Approve the appropriate letter.

Anthony Herman
General Counsel

Date

BY:

Kathleen Guith

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Deputy Associate General Counsel for Enforcement

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